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RIGHT OF PEOPLES TO SELF-DETERMINATION

The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with General Assembly resolution 47/84 of 16 December 1992, the report prepared by Mr. Enrique Bernales Ballesteros (Peru), Special Rapporteur on the question of the use of mercenaries.

Annex

REPORT ON THE QUESTION OF THE USE OF MERCENARIES AS A MEANS OF VIOLATING HUMAN RIGHTS AND IMPEDING THE EXERCISE OF THE RIGHT OF PEOPLES TO SELF-DETERMINATION, SUBMITTED BY THE SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS

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I. INTRODUCTION

1. The General Assembly, in resolution 47/84 of 16 December 1992, inter alia, condemned the continued recruitment, financing, training, assembly, transit and use of mercenaries, as well as all other forms of support to mercenaries, for the purpose of destabilizing and overthrowing the Governments of African States and of other developing States and fighting against the national liberation movements of peoples struggling for the exercise of their right to self-determination (para. 2). The Assembly reaffirmed that the use of mercenaries and their recruitment, financing and training are offences of grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations (para. 3).

2. The General Assembly urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to ensure, by both administrative and legislative measures, that the territory of those States and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries, or for the planning of activities designed to destabilize or overthrow the Government of any State and to fight the national liberation movements struggling against racism, apartheid, colonial domination and foreign intervention or occupation (para. 6).

3. The Assembly took note with appreciation of the report of the Special Rapporteur (A/47/412, annex) (para. 1) and requested him to report to it at its forty-eighth session on the use of mercenaries, especially in view of the additional elements highlighted in his report (para. 10).

4. At its forty-ninth session, the Commission on Human Rights considered the eleventh report of the Special Rapporteur (E/CN.4/1993/18) and adopted without a vote resolution 1993/5 of 19 February 1993.

5. Pursuant to resolution 47/84, the Special Rapporteur has the honour to submit to the General Assembly for consideration his twelfth report on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The report is an edited and abridged version of the document originally drafted and has been drawn up in accordance with the limit on the number of pages established, for reasons of austerity, for reports to the General Assembly.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Implementation of the programme of activities

6. The Special Rapporteur travelled to Geneva on 7 February 1993 in order to submit his eleventh report to the Commission on Human Rights (E/CN.4/1993/18). He submitted the report on 8 February. During his stay in Geneva, the Special Rapporteur held consultations with representatives of a number of States and met with members of non-governmental organizations. He also had coordination meetings with the Centre for Human Rights, particularly the Special Procedures

Section, and met with the Special Rapporteur on the human rights situation in the territory of the former Yugoslavia, Mr. Tadeusz Mazowiecki.

7. The Special Rapporteur visited Vienna from 14 to 18 June 1993, in order to participate in the drafting of the statement that the members of the working groups, special rapporteurs, special representatives and independent experts of the Commission on Human Rights submitted to the World Conference on Human Rights, which took place in that city from 14 to 25 June 1993.

8. The Special Rapporteur again visited Geneva, from 25 to 30 July 1993, in order to conduct a number of consultations, hold interviews and begin work on this report.

B. Correspondence

9. The Special Rapporteur received important communications from the Governments of Chile, the Comoros, Costa Rica, Cuba, Dominica, Ethiopia, Greece, Iraq, Kuwait, Liechtenstein, Peru, Romania, Yugoslavia (Serbia and Montenegro) and Zambia. These communications contain factual, legislative and doctrinal material that is of particular interest. The Special Rapporteur regrets that he is unable to reproduce them because of the limit imposed on the number of pages.

10. On 19 February 1993, the Permanent Representative of South Africa to the United Nations Office at Geneva sent the following letter to the Special Rapporteur:

> "There are currently several international observers in South Africa, including a United Nations Observer Mission (UNOMSA). While these teams are specifically mandated to examine the question of violence in South Africa, they necessarily examine related and peripheral issues. UNOMSA acts, as you are aware, on behalf and at the behest of the United Nations Secretary-General and the Security Council. They deal directly with the Government, other instances and, specifically, the organs set up in terms of the National Peace Accord.
>
> For that reason, given the delicate stage the negotiation process has reached and the continuous presence of the international community, it is not felt that further United Nations missions, on specific issues, would add to the transparency of the process. They may, in fact, complicate it. In the circumstances your understanding of the situation is appreciated."

11. The Special Rapporteur received information indicating that Mr. Bob Denard, Mr. Jean-Paul Guerrier and Mr. Dominique Malacrino were free under judicial supervision in France. These persons have allegedly participated in various mercenary activities in Africa during the past 16 years. Denard took part in the attempted coup d'état that occurred in Benin in January 1977 and, together with the other persons referred to, also participated in the attempted coup d'état of 26 November 1989 in the Islamic Federal Republic of the Comoros, during which that country's President was assassinated. In the light of this information, the Special Rapporteur sent the following communication to the Permanent Representative of France to the United Nations Office at Geneva on 7 July 1993:

"As you know, on 26 November 1989 and 9 April 1990 I approached your Government within the framework of my mandate in order to request it to provide information, inter alia, on the legal situation of Bob Denard before the French law courts. On 26 January 1990, the then Permanent Representative of France to the United Nations Office at Geneva sent me, in reply, the following text:

> 'With regard to the legal situation of Bob Denard before the French law courts, it should be recalled that an arrest warrant was issued against Mr. Denard on the grounds of criminal conspiracy. He will be brought before a court of law as soon as he enters French territory ...'

In his letter of 14 June 1990, the Permanent Representative added the following:

> 'More specifically with regard to Mr. Bob Denard, he is the subject in France of an arrest warrant issued in 1988. Furthermore, legal action relating to the assassination of President Abdallah has been instituted in the French law courts and is currently in progress'.

Subsequently, I received unofficial information indicating that Mr. Bob Denard had returned to France from South Africa on 1 February 1993 and that he had been immediately arrested at Charles de Gaulle Airport in Roissy. He is reported to have been sentenced on 5 April 1993 to a suspended prison term of five years by the Paris fourteenth court of summary jurisdiction, for criminal conspiracy by reason of participating in the attempted coup d'état in Benin in January 1977 and for recruiting mercenaries to take part in that operation, during which 5 persons were killed and 12 wounded in Cotonou, the country's main city.

Bob Denard, whose real name is said to be Gilbert Bourgeaud, was apparently also charged with participating in the attempted coup d'état which took place on 26 November 1989 in the Islamic Federal Republic of the Comoros and during which the President of the Republic, Ahmed Abdallah Abderemane, was assassinated. The examining magistrate in Paris conducting the judicial inquiry in the case, Mrs. Chantal Perdrix, nevertheless, is said to have ordered his conditional release on 3 April 1993. According to information communicated to me, two other persons charged in the case involving the Comoros, Jean-Paul Guerrier, alias 'Captain Siam', and Dominique Malacrino, alias 'Commander Marquès', are also reportedly free under judicial supervision.

In accordance with the mandate entrusted to me and in view of the fact that Mr. Denard, Mr. Guerrier and Mr. Malacrino have firsthand information on the recruitment, training and financing of mercenaries in Europe as well as their employment in Africa during the past 16 years, I should like to request your Government's permission to visit your country for two or three days between 23 and 30 July 1993 to meet Mr. Bob Denard and also, if possible, Mr. Guerrier and Mr. Malacrino. In order to carry out this mission, I shall need your Government's assistance to determine the place,

date and time for holding these meetings as well as its cooperation with regard to possible judicial and administrative formalities.

Any official information which your Government kindly provides to me on the legal situation of the persons referred to above as well as the meetings which I hope to be able to have with them, with the authorization and cooperation of your Government, will be very useful in drawing up the report that I am to submit to the General Assembly at its forty-eighth session."

12. After the current report was finalized, the Special Rapporteur also received a lengthy communication from the Permanent Mission of the Republic of Cuba to the United Nations Office at Geneva. The communication refers to various acts of aggression which have originated in Miami and been committed against Cuban sovereignty and territory since April 1961 by persons who are presumed to be of Cuban nationality and, in more than one instance, allegedly were given explicit support or were tolerated by United States officials. The communication contains requests to the Special Rapporteur concerning the need to carry out in-depth studies and put forward concrete proposals on the concept of mercenary activities and everything that their practice entails. The Special Rapporteur will consider on a case-by-case basis, within the framework of his mandate and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, a/ the various allegations put forward and in the meantime reiterates what was indicated in paragraphs 23 and 24 of his previous report to the Commission on Human Rights (E/CN.4/1993/18).

III. MERCENARY ACTIVITIES IN AFRICA

A. Angola

13. On 9 July 1993, the Special Rapporteur sent a communication to the Government of Angola requesting official information on various reports concerning the presence of mercenaries in the armed conflict affecting that country. The reports mainly concern the presence of foreign mercenaries in the ranks of the National Union for the Total Independence of Angola (UNITA), most of whom are from South Africa and Zaire. According to the Commander of the Northern Region, General Eusebio Brito Texeira, some white mercenaries apparently were buried in Soyo, together with UNITA fighters. The inhabitants of Soyo allegedly have also reported the participation of Zairian mercenaries in the looting that took place in that town.

14. The reports also concern the recruitment of former members of South Africa's 31st and 32nd Battalions as security guards at Angolan oil refineries and installations, who are alleged to have fought in Huambo alongside the UNITA forces. The guards were allegedly recruited by the South African firm Executive Outcomes headed by Eeben Barlow and transported to Angola by the transport firm Propilot in aircraft belonging to Westair. Three mercenaries, Geoffrey Landsberg, Hermanus Ferreira and Nico Bosman, were wounded in fighting in Huambo and evacuated in a clandestine Propilot flight to South Africa on 11 March 1993. The Angolan Government's clarification of these issues will provide sufficient information to determine to what extent mercenaries are involved in the conflict.

B. South Africa

15. The previous reports submitted by the Special Rapporteur refer to the armed conflicts in southern Africa, where the presence of mercenaries has been detected. His reports have contained an analysis of the question of apartheid and the racist policy of South African Governments, which impeded the enjoyment of human rights and the exercise of the right to self-determination of the people of South Africa and adversely affected the sovereignty of all the countries of the region.

16. The Special Rapporteur's previous reports have also made ample reference to the struggle of South Africa's Black majority to liquidate the regime of racial segregation. The African National Congress (ANC) has been the principal orchestrator of the South African people's resistance, and it has suffered intense persecution as a result. In order to suppress ANC leaders and carry out massacres in suburbs inhabited by the Black majority, the regime has tolerated the recruitment of mercenaries by front organizations, both public and private. In his report to the Commission on Human Rights at its forty-eighth session (E/CN.4/1992/12) the Special Rapporteur referred to the unlawful activities carried out by the Civil Cooperation Bureau (CCB), a unit of the Special Forces of the South African Defence Force (SADF), the so-called "Unit C-1", a South African police squad based at Vlakplaas and the Security Department of the Johannesburg City Council. Participation by mercenaries in assassinations and attacks on ANC leaders in various African and European countries has also been described. The Special Rapporteur reported on covert activities carried out by the military intelligence services aimed at discrediting the ANC, and he welcomed the establishment of the Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation and the investigations carried out by it under the chairmanship of Judge Richard Goldstone. The Special Rapporteur is of the opinion that the Commission should also focus its investigation on recourse to the hiring and use of mercenaries.

17. The Special Rapporteur's previous reports also deal with the monitoring and analysis of the process of dismantling the apartheid regime and replacing it by an open and democratic political, social and economic organization. Despite this process, some members of the white minority refuse to acknowledge the end of the racist regime and have set up paramilitary machinery for the purpose of "fighting for the survival of the white people". These assault groups are engaging in extremely violent action, including provoking confrontations between various Black ethnic groups in South Africa. These organizations - among which the Afrikaner Resistance Movement (AWB) is usually mentioned - do not hide their sympathy for the national socialist ideology, and several of their members have been found guilty of terrorist attacks throughout 1992 and in 1993. The presence of mercenaries as instructors or members of the military machinery of these organizations has been reported repeatedly. For example, in the case of a Belgian mercenary, Jean Bultot, it has been proved that he was engaged by the World Apartheid Movement as an instructor in the use of military weapons.

18. In this context, there are two opposing trends in South Africa. On the one hand, under the National Peace Accord, which involves almost the entire South African political spectrum, there is a timetable providing for multiracial elections in April 1994, a plural constituent assembly, a new constitution and an interim Government to ensure the transition to democracy by 1999. On the

other hand, extremist forces on all sides - mainly minority White extremist groups but also Black majority groups that encourage violence and ethnic intolerance - are promoting racial and inter-ethnic violence in an attempt to convert the Accord into a polarized confrontation.

19. The assassination of the South African Communist leader and member of the ANC National Executive, Chris Hani, on 10 April 1993 by a Pole named Janusz Walus who had been linked to the African Resistance Movement (AWB) since 1986 and to the "White Wolves" organization, could be used as a starting-point for investigations into the presence in South Africa of individuals from Eastern Europe who have become mercenaries because of their anti-communist views and their need to earn money.

20. The reports received by the Special Rapporteur also concern activities carried out by high-ranking officials and agents of the South African Intelligence Service which consist in establishing international networks of businesses, humanitarian organizations, service agencies and suppliers of arms and mercenaries for protecting South African economic interests after the end of the apartheid regime. For example, the so-called "Operation Agree" revealed by Nico Basson, a former South African intelligence officer, is described as phased strategic planning of action in Namibia, Angola and other southern African countries in connection with firms established in Europe with a view to maintaining South Africa's economic hegemony over the region in the post-apartheid era. The investigations carried out by the journalists of The Guardian, Victoria Brittain and David Pallister, in March 1993 revealed the establishment of the organization Strategy Network International in Westminster with offices in Bonn and Paris and with connections to the German organization Hilfe in Not, the Zimbabwean firm Reedway, the company Merchant International Trading Inc., the South African firm SA Bias, the company Merchant Trade Finance and the South African armaments firm Armscor.

21. The purpose of all these activities is to sabotage the process of abolishing apartheid and to force the South African Government to adopt a repressive system that would represent a set-back in terms of all the progress that has been made towards dismantling apartheid. Nevertheless - despite limited discussion, continuing distrust, the intolerance that characterizes relations between the ANC and the Inkhata Freedom Party and between members of these organizations who have not only participated in criminal activities but are also inclined to be extremist in their views - the abolition process has not stopped.

22. The Special Rapporteur reiterates that the apartheid regime manifestly contravenes the purposes and principles enshrined in the Charter of the United Nations, and is a blatant violation of the human rights of the South African people and a crime against humanity that seriously threatens peace and security in southern Africa. The abolition of apartheid and the consolidation of the peace and democratization process without relapse or concessions, and increased civic awareness among the population would signal the beginning of the easing of tension and the end of the repressive methods used to enforce racist policies. Clearly, if this aim is achieved, recourse to the use of mercenaries will be over and mercenaries will be forced to leave South Africa for good.

IV. PRESENCE OF MERCENARIES IN THE FORMER YUGOSLAVIA

23. The Special Rapporteur has been considering the presence of mercenaries in the conflicts that have occurred and are occurring in the territory of the former Yugoslavia since the preparation of his tenth report, submitted to the General Assembly at its forty-seventh session (A/47/412, annex). He has sent various communications to the States concerned and held interviews with their representatives prior to carrying out a comprehensive analysis and reaching a definite opinion that is not based on mere rumours, baseless allegations or statements constituting war propaganda.

24. The eleventh report of the Special Rapporteur submitted to the Commission on Human Rights at its forty-ninth session (E/CN.4/1993/18) contains the replies provided by the Governments of the Republic of Croatia (para. 112), Slovenia (para. 111) and the Federal Republic of Yugoslavia (Serbia and Montenegro) (para. 110) to his request of 29 July 1992 for information; the Government of the Republic of Bosnia and Herzegovina has not yet responded, probably as a result of the serious situation in that country.

25. During his stay in Geneva from 7 to 13 February 1993, the Special Rapporteur requested an interview with Mr. Mustapha Bijedic, Chargé d'affaires a.i., of the Permanent Mission of the Republic of Bosnia and Herzegovina to the United Nations Office at Geneva. Unfortunately, the interview could not take place.

26. On 11 February 1993, the Special Rapporteur interviewed Mr. Ivica Kostovic, a member of the Observer delegation of the Republic of Croatia to the forty-ninth session of the Commission on Human Rights, at the Palais des Nations at Geneva. The Special Rapporteur informed Mr. Kostovic about the matters dealt with at the meeting he had had on 13 October 1992 at United Nations Headquarters with Ambassador Vladimir Drobnjac, Permanent Representative of the Republic of Croatia to the United Nations, and Mr. Matesic, a member of the Croatian Mission. The Special Rapporteur added that he deemed it necessary to obtain specific information concerning the reports which he had received relating to the presence of foreign combatants in the conflicts in the former Yugoslavia, so as to enable him to determine, through exhaustive on-site investigations, whether the individuals involved might be mercenaries.

27. Mr. Kostovic observed that, in carrying out his mandate, the Special Rapporteur should bear in mind the distinction between the aggressor and the victim. The Special Rapporteur should start from the premise that Croatia had been the victim of a war of aggression at a time when it had been building its nascent democracy, a war which had resulted in one fourth of its territory being controlled by Serbian militias and paramilitary groups. In view of the ferocity of the aggression to which it had been subjected, characterized by the perpetration of unprecedented atrocities against Croatian civilians and the needless destruction of their property, Croatia had been forced to defend itself and to accept help from combatants of foreign nationality, but of Croatian origin, who would be Croats under the criterion of jus sanguinis, which many European countries used to establish nationality. Accordingly, one could not speak of foreign mercenaries, but of volunteers of Croatian origin, whom Croatia had accepted into its armed forces in exercise of its right of self-defence against the aggression of Serbia and Montenegro.

28. That had happened at the beginning of the war of aggression; however, on 4 September 1992, the Ministry of Defence had demobilized all the foreigners who had been serving in the Croatian army. Lastly, Croatia was building a democratic republic, with a legal system based on respecting and promoting human rights and fundamental freedoms, protected by a regular army subordinate to civilian authority and consisting of Croatian citizens.

29. On 10 February 1993, the Special Rapporteur held a meeting at the United Nations Office at Geneva with Ambassador Vladimir Pavicevic, Chargé d'affaires a.i. of the Permanent Mission of the Federal Republic of Yugoslavia (Serbia and Montenegro) to the United Nations Office at Geneva, and Mrs. Olga Spasic, Secretary of that Mission. The Special Rapporteur informed them of the meeting which he had held on 13 October 1992 at United Nations Headquarters with Ambassador Dragomir Djokic, Chargé d'affaires a.i. of the Permanent Mission of the Federal Republic of Yugoslavia to the United Nations, and Mr. Milos Strugar, a member of that Mission. The Special Rapporteur stated that he had received various reports concerning the presence of foreign combatants in the conflicts in the former Yugoslavia, and that those reports should be properly investigated and empirically verified, through an on-site investigation, if possible. The Special Rapporteur also requested further information.

30. Ambassador Pavicevic stated that his Government was fully prepared to collaborate in the carrying out of the Special Rapporteur's mission, and that all it was hoping for was objectivity in the Special Rapporteur's handling of the issue and in the conduct of his investigations. Such objectivity was, regrettably, lacking in other reports submitted to various bodies of several international organizations and in many articles and reports published in the international press. He indicated, as an example, a photograph of a Croatian soldier committing a crime, which had appeared in various international publications with a caption stating that the soldier involved was Serbian, although the uniform and the insignia which the soldier was wearing were sufficient to show that he was a member of the Croatian armed forces. Croatia had recruited a substantial number of foreign mercenaries and had incorporated them into its armed units as experts, instructors and combatants. In the war in Bosnia and Herzegovina, both the Croatian and the Muslim forces had foreign mercenaries in their ranks. It had been shown that there were mercenaries of Afghan, Egyptian, Iranian, Jordanian, Libyan, Moroccan, Pakistani, Sudanese and Turkish nationality, and mujahidin from various Islamic countries, fighting alongside the Muslim forces in Bosnia and Herzegovina. Lastly, the international community in general, and the Special Rapporteur in particular, should bear in mind that the Federal Republic of Yugoslavia was laying the groundwork for a democratic and prosperous society based on respect for human rights, that his Government was making great efforts to contribute to ending the war in Bosnia and Herzegovina, and that it had proclaimed its firm intention to respect the territorial integrity of the other States which had emerged from the territory of the former Yugoslavia, as shown by the withdrawal of the Yugoslav Federal Army from Bosnia and Herzegovina in May 1992.

31. On 12 February 1993, the Special Rapporteur held a meeting at the offices of the Centre for Human Rights in Geneva with the Commission on Human Rights Special Rapporteur on the human rights situation in the territory of the former Yugoslavia, Mr. Tadeusz Mazowiecki, during which he informed Mr. Mazowiecki of

the status of his investigations, the communications and allegations received, and the meetings referred to in the preceding paragraphs. The Special Rapporteur expressed to Mr. Mazowiecki his desire to ensure proper coordination of the efforts undertaken in the carrying out of both mandates, either directly or through the Special Procedures Section of the Centre for Human Rights, and offered Mr. Mazowiecki whatever cooperation he might deem necessary. The Special Rapporteur on the human rights situation in the territory of the former Yugoslavia agreed on the need to coordinate the carrying out of both mandates in their respective spheres of competence and welcomed the cooperation offered.

32. The Special Rapporteur received information relating to clandestine activities involving the recruitment and training of mercenaries in the territory of the Argentine Republic with a view to sending them to fight alongside the forces of the Council for the Defence of Croatia (HVO) in the war in Bosnia and Herzegovina. Accordingly, on 6 July 1993, he sent the following letter to the Permanent Representative of the Argentine Republic to the United Nations Office at Geneva:

> "I should like to bring to the attention of your Government my receipt of the following information, which requires confirmation:
>
> (a) Mr. Domagoj Antonio Petric and the tourist services enterprise OTPOR are said to have carried out and to be carrying out in the territory of your country clandestine activities involving the recruitment and training of Argentine citizens with a view to sending them to fight alongside Croatian forces in the war currently being fought in Bosnia and Herzegovina;
>
> (b) The aforesaid training is allegedly taking place in Córdoba province, in the area called 'Villa Alpina', which supposedly has physical characteristics fairly similar to those of the territory of Bosnia and Herzegovina;
>
> (c) Three hundred twenty-nine Argentine citizens, some of whom are said to be of Croatian descent, and other retired armed forces personnel, have allegedly been sent to fight, after receiving the requisite training, alongside the forces of the Council for the Defence of Croatia (HVO) in the territory of Bosnia and Herzegovina. Of these, 34 have reportedly died in combat;
>
> (d) These persons are said to have been remunerated through the payment of various sums in United States dollars.
>
> As I am in the process of preparing the report which I am to submit to the General Assembly at its forty-eighth session, I should be grateful if your Government would provide me with official information and its comments on these allegations, as well as on the results of any investigations which may be carried out to determine their truthfulness and accuracy."

33. On 11 August 1993, the Permanent Mission of the Argentine Republic to the United Nations Office at Geneva replied as follows to the communication transcribed in the preceding paragraph:

"The Permanent Mission of the Argentine Republic to the international organizations in Geneva has the honour, with reference to the communication from the Special Rapporteur on the question of the use of mercenaries, to report that the investigations carried out on this subject have had negative results.

It should also be noted that up to now, no individuals have been involved, no signs of clandestine recruitment operations have been found, and the OTPOR tourism agency is not registered as such.

Mr. Domagoj Antonio Petric was also questioned; he denied any participation in the alleged incidents.

Despite what has been reported above, the Argentine Government authorities are continuing the investigations, which is why a final result cannot be provided, bearing in mind the time that has elapsed since the incidents were brought to the attention of the competent authorities."

34. The Special Rapporteur has received various reports concerning the presence of foreigners in the forces of the Croatian National Guard which fought against the Serbian forces in 1991; among them, mention should be made of Eduardo Rosas Flores, of Spanish origin; the German citizen Kurt (Hans Wilhelm) Reisner; the United States citizen Colton Perry; the German citizen Harlan von Besinger and the French citizen Jean Nicolier. He has also received reports concerning the participation of foreigners in the war which is currently being fought in Bosnia and Herzegovina, who are said to be fighting alongside the various parties to the conflict. Thus, the presence of foreigners in Serbian armed groups, namely, the self-styled "Volunteer Units of Serbia and Montenegro", "Arkanes", "Seseli", "White Eagles", "Armed Units of the Serbian Democratic Party", "Vulkovar Serbian Detachment" and "Dusan Silni", has been reported. The foreigners Michael Faci and Nicholas Peucelle, of French nationality, among others, are alleged to have fought alongside the forces of the Council for the Defence of Croatia (HVO). Lastly, foreigners, mostly from Islamic countries, have been reported to be fighting alongside the Government forces of Bosnia and Herzegovina.

V. PRESENCE OF MERCENARIES IN SOME STATES WHICH HAVE EMERGED IN THE TERRITORY OF THE FORMER UNION OF SOVIET SOCIALIST REPUBLICS (USSR)

A. Armenia-Azerbaijan (Nagorny Karabakh)

35. On 30 August 1991, Azerbaijan declared its independence from the former Union of Soviet Socialist Republics (USSR) and became a new, sovereign and independent State. On 10 October, the Azerbaijani Parliament nationalized all the Soviet military equipment located in its territory. Subsequently, on 18 December, President Ayaz Mutalibov ordered the 4th Soviet Army stationed in Azerbaijan to be placed under his command and the units of the Soviet Ministry of the Interior to be integrated into the Azerbaijani armed forces.

36. On 2 September 1991, in other words, two days following the proclamation of independence of Azerbaijan, the inhabitants of Nagorny Karabakh, the great

majority of whom are Armenians, proclaimed the establishment of the "Republic of Nagorny Karabakh", relying on a provision of the Soviet law on secession which provided that an autonomous region could decide to remain a part of the USSR if the Republic to which it belonged declared its independence from the Union.

37. For its part, the Republic of Armenia formally proclaimed its independence from the former USSR and its conversion into a new, sovereign and independent State on 23 September 1991, two days following the holding of a referendum in which 99.31 per cent of the voters declared themselves in favour of independence.

38. The response of the Azerbaijani Parliament to the proclamation of the "Republic of Nagorny Karabakh" was to annul the region's autonomous status at a special session held on 26 November 1991, to launch a large-scale military offensive against the enclave, and to declare an economic blockade against Armenia. In January 1992, some army troops and security forces of the former USSR withdrew from Nagorny Karabakh. The inhabitants of the enclave then formed volunteer self-defence units which were able to resist the Azerbaijani offensive. In the midst of war, they held a referendum on 10 December 1991, in which 95 per cent of the voters declared themselves in favour of independence from Azerbaijan. Eighty-five per cent of the inhabitants of Nagorny Karabakh voted in that referendum. On 28 December, they elected their first parliament.

39. Azerbaijani offensives launched in June and July 1992 succeeded in capturing Mardakert, Haterk and Askeran, in the north and east of the enclave. This offensive was however held up by a counter-offensive of combined Armenian forces and the civil defence force of Nagorny Karabakh, which succeeded in winning back Haterk and the villages of Meshen, Mojratag and Damirly on 20 July.

40. On 3 April 1993, combined Armenian and Nagorny Karabakh forces captured the city of Kelbajar. On 14 April they began to bombard Fizuli. By 3 May, one tenth of Azerbaijan's territory was in the hands of combined Armenian and Karabakh forces. On 23 July these forces took control of the strategic city of Agdam, situated outside Nagorny Karabakh, while continuing their push towards Fizuli; towards Barda, in the north; and towards Agjabedi, in the east. The Azerbaijani forces, for their part, bombarded Vardenis and other Armenian cities from the air.

41. This serious conflict is alleged to have resulted in the recruitment, financing and use of mercenaries. The Special Rapporteur received various reports which had been brought to the notice of the Azerbaijani Government through a letter dated 26 July 1993 as well as to the notice of the Armenian Government through a letter dated 28 July 1993. The Special Rapporteur is awaiting replies from the above-mentioned Governments. The reports are the following:

(a) On 26 July 1992, a French mercenary was killed during an Azerbaijani attack on the village of Karintag, near Stepanakert;

(b) In February 1992, a foreign mercenary fighting with the Armenian self-defence forces was killed in the attack on the Azerbaijani town on Khojaly;

(c) From 12 to 14 June 1992, nine foreign mercenaries fighting among the Armenian forces were killed in the battles around Askeran;

(d) On 1 July 1992, the commander of a battalion of the self-defence forces of Azerbaijan stated to the Tuyran News Agency that in a battle in the Mardakert region a foreign mercenary, who had sided with the Armenian National Army, was killed;

(e) On 1 June 1993, six former Russian soldiers were captured in action, after reportedly carrying out subversive operations in Nagorny Karabakh. According to the information received, they were recruited by Russian officers to train Armenian units in Nagorny Karabakh, after the dissolution of their Russian units in Armenia and their dismissal. They were reportedly convicted as mercenaries;

(f) Foreign mercenaries reportedly working for payment for the Nagorny Karabakh and Armenian forces, but also for the Azerbaijani forces, have reportedly shelled houses, hospitals and churches, looted and burned houses and intentionally terrorized and forced the civilian population out of villages, by killing and wounding civilians, including women and children, and by taking civilian hostages;

(g) Foreign mercenaries of Slav and Turkish origin are reportedly performing highly specialized military functions in the Azerbaijani army.

B. Georgia

42. On 9 April 1991, the Parliament of the Soviet Socialist Republic of Georgia voted unanimously for independence from the USSR, thus following the example set by Lithuania, Latvia and Estonia. The newly independent State soon had to face attempts to secede on the part of the region of South Ossetia, the majority of whose population wished to become part of the Russian Federation. In January 1993 the Government of Georgia declared its desire to settle the crisis peacefully, guaranteeing the cultural autonomy of South Ossetia while opposing negotiations on the question of secession. The crisis was finally settled in June 1992 when a peace-keeping force of 1,500 Russian, Georgian and Ossetian soldiers was sent to the region, as had been agreed upon in the course of negotiations between representatives of the Russian Federation, Georgia, North Ossetia and South Ossetia.

43. Soon after its independence, Georgia had to face serious internal problems as well. In December 1991 the State Council overthrew President Zviad K. Gamsakhurdia and in June 1992 named as Interim President the former Minister for Foreign Affairs of the Soviet Union, Eduard Shevardnadze. In October 1992, presidential and legislative elections were held. Shevardnadze was elected President of the Republic by a broad majority although it appears that supporters of Gamsakhurdia, together with many Ossetes and Abkhaz, did not take part in the election.

44. In November 1992, Georgian officials in Abkhazia were abducted by the supporters of the overthrown President, Gamsakhurdia. The Georgian National Guard was sent to free them, causing serious armed clashes with troops of the

Ministry of the Interior of Abkhazia. The Georgian National Guard subsequently occupied the capital of Abkhazia, Sukhumi, soon after clashes which caused hundreds of deaths, mostly among civilians.

45. On 10 March 1993, President Shevardnadze announced before Parliament in Tbilisi that thousands of Russian citizens, mercenaries and members of the regular armed forces were directly involved in armed hostilities against Georgia. In the face of such a serious report as well as other information regarding participation of foreign mercenaries in the conflict in Abkhazia, the Special Rapporteur sent, on 20 July 1993, the following communication to the Minister for Foreign Affairs of the Republic of Georgia:

> "In accordance with the mandate entrusted to me, I should like to request official information from your Government on reports I have received regarding the alleged use of foreign mercenaries in the current hostilities in the Georgian province of Abkhazia. The reports mentioned above assert the following:
>
> (a) In November 1992, a citizen of the Russian Federation was executed in Abkhazia after being charged with mercenary activities and sentenced to death by a court martial;
>
> (b) On 10 March 1993, the President of the Republic of Georgia, Mr. Eduard Shevardnadze, stated at the Parliament in Tbilisi that 'thousands of Russian citizens, mercenaries and regular army men are directly involved in military hostilities against Georgia';
>
> (c) Foreign mercenaries working for payment for the Abkhaz separatist forces have committed acts of violence against the civilian population, including summary executions, torture, plunder, taking hostages and burning houses;
>
> (d) Citizens of the Russian Federation and Moslem foreigners of other nationalities have reportedly trained, armed and aided the Abkhaz separatist forces."

46. The Special Rapporteur subsequently received information according to which entire units of the Russian army had intervened in Abkhazia from the north and from the sea. Russian soldiers were alleged to have been involved in the illegal sale of arms, ammunition and petrol to the Abkhaz forces, and even to have offered their services to the separatist forces in return for payment.

47. President Shevardnadze confirmed his statement when addressing the Georgian Parliament on 16 March 1993, saying that "an armed conflict now exists between Georgia and the Russian Federation". President Shevardnadze added that Russian army troops stationed in the area had openly supported the attack on Sukhumi carried out by Abkhaz forces. The air force of the Russian Federation had also taken part in the fighting, which enabled Abkhaz units to capture strategic positions above the river Gumista and to approach the Abkhaz capital.

48. Russian parachutists tried unsuccessfully to capture Sukhumi airport and, according to reports, a Russian submarine attempted to surface in the bay of the city. On 19 March, a Russian air force Sukhoi-25 fighter aircraft was shot down

in Abkhazia. The Ministry of Defence of the Russian Federation confirmed that the aircraft had been shot down but said that it was a Sukhoi-25 fighter aircraft of the Georgian air force bearing the colours and insignia of the Russian air force. On 19 March, the Ministry of Defence of the Russian Federation stated that, because of the special responsibilities of the Russian Federation in the territory of the former Soviet Union, the units of its army stationed in Abkhazia had remained strictly neutral during the Georgian civil conflict and had confined themselves to declaring a 3-mile exclusion zone around the Russian military base at Eshera. It also stated that Georgian troops had attacked a Russian military hospital in Sukhumi and a Russian military laboratory at Eshera.

49. Fortunately, the President of the Russian Federation, Boris N. Yeltsin, and President Shevardnadze concluded a cease-fire agreement on 14 May 1993, which was due to enter into force on 20 May and to be followed by the withdrawal of heavy weaponry from the conflict zone and the introduction of a no-fly-zone over the region. On 27 July 1993, a peace agreement was signed between representatives of the Abkhaz and Russian Parliaments at the Russian resort of Sochi, thanks to the mediation of the Deputy Minister for Foreign Affairs of the Russian Federation, Mr. Boris Pastukhov. The peace agreement provides, inter alia, for the withdrawal of the troops of the Georgian Republic from Abkhazia; the return to Sukhumi of the Abkhaz members of Parliament who had withdrawn to Gudauta; and the withdrawal from Abkhazia of all external armed formations, including the units of Cossacks and the so-called Confederation of Mountain Peoples of the Caucasas, as well as the disarming of all local paramilitary groups. The peace agreement also established a new cease-fire, which was due to enter into force at 1200 hours on 28 July 1993 and whose observance was to be supervised by joint Abkhaz-Georgian monitoring groups. These joint groups would form the basis of a new multinational army consisting of Abkhaz and Georgian regiments. They would be assisted in their work by a group of 50 United Nations military observers. This would bring an end to a conflict which, according to a statement made by the Minister for Health of the Republic of Georgia on 19 July 1993, has resulted in the deaths of 1,446 people, left a further 4,956 wounded, and created 120,000 refugees and displaced persons.

C. Republic of Moldova

50. On 28 July 1993, the Special Rapporteur transmitted the following communication to the Permanent Representative of the Republic of Moldova to the United Nations:

> "As you are aware, on 5 August 1992 the Ministry of Foreign Affairs of the Republic of Moldova sent to the Centre for Human Rights note No. 837 which contains the following statement:
>
> > 'We wish to inform you that we possess irrefutable evidence that Kazakhs and citizens of the Russian Federation have been participating in the armed conflict in the eastern regions of the Republic of Moldova. This runs counter to General Assembly resolutions 46/87 and 46/88.'

This note was summarized in the report I submitted to the Commission on Human Rights during its forty-ninth session (document E/CN.4/1993/18, para. 20).

My mandate under General Assembly resolution 47/84 of 16 December 1992 and Commission on Human Rights resolution 1993/5 of 19 February 1993, requires me to report on the existence and activities of mercenaries which affect human rights and the exercise of the right of peoples to self-determination. I would, therefore, be grateful for any specific information you might be able to provide on the existence of foreign military forces and mercenaries which were involved in the armed conflict in the eastern regions of the Republic of Moldova and, in particular, on the irrefutable evidence that your Government claims to possess concerning the participation of citizens of the Russian Federation and Kazakhs in that armed conflict. This information is needed in order to determine whether they have been so participating as mercenaries or as members of regular armed forces."

51. After declaring its independence from the USSR and becoming a new sovereign State, the Republic of Moldova was faced with secessionist pressures from the Slavic and Russian-speaking peoples of the region on the left bank of the river Dniester. Ethnically, the population of the Republic of Moldova consists of more than three and a half million Moldovans, a Romanian-speaking population, more than half a million Russians, and about 300,000 Ukrainians. In the region situated on the left bank of the Dniester, however, members of the Russian and Ukrainian ethnic groups form more than half the population. This region expressed its desire to secede from the Republic of Moldova, bringing about a serious armed conflict between the armed forces of the Republic of Moldova and the secessionist forces of the so-called Trans-Dniester Republic.

52. On 22 June 1992, Moldovan forces attacked a mine depot of a battalion of engineers of the 14th Russian Army stationed in Parcani, a village in the region of Slobozia, causing the death of more than 30 Russian soldiers. The cities of Grigoriopol and Dubossary were also shelled.

53. During the fighting, the forces of the secessionist Trans-Dniester Republic received support, guidance, training and weapons from Russian officers and reservists, as well as from Cossack mercenaries, according to the complaint made to the Moldovan Parliament on 22 June 1992 by the President of the Republic, Mircea Snegur.

54. This serious situation prompted the establishment of a group of observers from the Russian Federation, the Republic of Moldova, Romania and Ukraine, who went to Bendery and, having secured a partial halt to the fighting, proposed the negotiation of a cease-fire agreement. The agreement was signed on 3 July 1992 in Moscow by Presidents Snegur and Yeltsin. However, there was a fresh outbreak of fighting two days later in Bendery, causing dozens of deaths, the destruction of 20 per cent of the city's buildings and the exodus of 80,000 of its 150,000 inhabitants, according to the Mayor of the city, Vyacheslav Kogut.

55. A new cease-fire agreement in July 1992 was finally observed and maintained. The agreement provided, inter alia, for the withdrawal of the opposing forces from the eastern region of the Republic of Moldova; the

establishment of a demilitarized zone along the frontier of the so-called Trans-Dniester Republic; and the sending of a joint Moldovan and Russian peace-keeping force, which was stationed in the region on 5 August 1992. The Russian Federation agreed to recognize the region of Trans-Dniester as part of Moldovian territory. In return, Moldova undertook to respect the right to self-determination of the people of the Trans-Dniester should it decide in future to change its frontiers or become a part of Romania.

56. The Special Rapporteur considers it highly encouraging that the cease-fire has been concluded and observed and hopes it will pave the way for a stable peace in the Republic of Moldova. However, he considers that the participation in the internal conflict in the Republic of Moldova by forces of the army of the Russian Federation should be properly investigated, since it is extremely important to determine in which cases those forces participated as members of a regular army, under the orders and authority of the Ministry of Defence of the Russian Federation. It is also extremely important to investigate the participation of Cossack mercenaries in the conflict.

D. Tajikistan

57. Another serious armed conflict in the south of the territory of the former Soviet Union is the one that has been in progress for more than 3 years in the Republic of Tajikistan, a strategically important country because of its geographical location and its rich uranium and nickel deposits. Since declaring independence, the country has been confronted with serious political problems. In May 1992, a coalition consisting of the Islamic Party and the Democratic Party took power, but was overthrown in December of that year by a party composed of former officials of the Communist regime. The overthrow of the Islamic-Democratic Government was violent. Members of the Islamic Party were persecuted and forced to take refuge in the Badakhshan Autonomous Republic and in the interior of Afghanistan. However, neither the Islamic-Democratic Government nor its successor was able to secure full control over national territory, which has been devastated by armed clashes between rival clans, mainly in the south and east of the country.

58. In early 1993, the new Government controlled the capital, Dushanbe, the southwestern cities of Kulyab and Kurgan-Tyube, and the extreme north of the country. In Dushanbe hundreds of persons were executed in January 1993 for supporting the Islamic-Democratic Government or simply for belonging to ethnic groups living in parts of the country not under the control of the new Government. According to reports received by the Special Rapporteur, pro-Government militias led by Sangak Safarov and including foreign mercenaries took part in this brutal repression. A state of emergency had to be declared in Dushanbe, and officials and soldiers from the 201st Division of the army of the Russian Federation were alleged to have been incorporated into local law enforcement units, formed by the new Government in Dushanbe.

59. The new Government led by Ali Rahmonov met with opposition from the Democratic Party and the Islamic Renaissance Party as well as ethnic groups from the eastern and south-eastern regions of the country. This gave rise to various paramilitary organizations such as the "Islamic Democratic Militias", "Garm Militias", "Pamir Militiamen", "Mujahidin" and "Militias of the Islamic

Renaissance Party". On 13 July 1993, armed opposition militiamen killed 24 guards of the Russian Federation army who had been patrolling the Tajikistan-Afghanistan border. This was the twelfth such attack on the Russian position along the Tajik-Afghan border. During the attack a further 20 Russian soldiers were reported missing with 30 wounded. The nearby village of Sarigor also came under attack, resulting in a total of 200 deaths.

60. The civil war in Tajikistan has caused more than 30,000 deaths in the course of the last 16 months; more than half a million people were internally displaced, with 100,000 Tajiks finding refuge in Afghanistan, a country facing serious problems in taking back its own refugees.

61. It is alleged that Russian troops are patrolling the Tajik Afghan border which forms the southern boundary of the Commonwealth of Independent States (CIS), supposedly in accordance with the treaty signed between the Russian Federation and Tajikistan. Nevertheless, such issues as the participation of Russian officers and soldiers in clashes with the armed Tajik opposition and the integration of Russian officers and soldiers of the 201st Division of the army of the Russian Federation into the Tajik security forces in Dushanbe still have to be clarified. It is extremely important to determine whether cases have arisen where Russian officers and soldiers have ceased to obey orders issued by the Ministry of Defence or the Ministry of the Interior in Moscow and have acted independently and on their own initiative. The Special Rapporteur has also received information relating to the presence of foreign combatants in the armed militias of the opposition - foreigners entrusted with various leadership and command positions and with military operations of an especially complex nature. It is claimed, for example, that foreigners manned the opposition forces' artillery in the attack against the border town of Pyanj which took place on 22 July 1993.

62. In the light of this information, on 29 July 1993 the Special Rapporteur sent a communication to the Permanent Representative of Tajikistan to the United Nations requesting official information.

E. Final observations

63. With respect to the participation of Russian officers and soldiers of the armed forces and air force as well as forces of the Ministry of the Interior of the Russian Federation in the armed conflicts involving Armenia and Azerbaijan (Nagorny Karabakh), Georgia, the Republic of Moldova and Tajikistan, on 30 July 1993 the Special Rapporteur sent a letter to the Permanent Representative of the Russian Federation to the United Nations Office at Geneva requesting official information.

64. The Special Rapporteur considers it necessary to specify that unless there is a swift end to the armed conflict between Armenia and Azerbaijan (Nagorny Karabakh) and to the conflicts in Georgia and Tajikistan, and if the situation in the Republic of Moldova is not resolved once and for all, peace and security in the whole region could be seriously threatened. These ongoing armed conflicts are capable of generating political and military tension which could affect the Russian Federation, Afghanistan, China, the Islamic Republic of Iran, Kazakhstan, Kyrgyzstan, Romania, Turkey, Ukraine, and Uzbekistan. A peaceful

and just means of solving ethnic and national conflicts must be found in the countries which have come into existence on the territory of the former Soviet Union so that these countries may successfully strengthen those democratic institutions which promote and protect human rights and the basic freedoms of their citizens, particularly the minorities, and so that they can return to the path of economic and social development. Only thus will it be possible to outlaw recourse to mercenary activities in this vast region.

VI. THE CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

65. By means of resolution 44/34 of 4 December 1989, the General Assembly adopted the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and opened it for signature and ratification or accession. The Assembly thus contributed to the progressive development and codification of international law in this area, reaffirming the purposes and principles enshrined in Articles 1 and 2 of the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex, of 24 October 1970).

66. The Convention is to enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations, in accordance with article 19, paragraph 1. The Special Rapporteur is compelled to draw attention to the slow pace of the process of expressing consent to be bound by the international convention through ratification or accession, since up to now only six States have completed this process: Barbados, which acceded to it on 10 July 1992; Cyprus, which deposited its instrument of accession on 8 July 1993; Maldives, which signed the Convention on 17 July 1990 and ratified it on 11 September 1991; Seychelles, which acceded to it on 12 March 1990; Suriname, which signed it on 27 February 1990 and ratified it on 10 August 1990; and Togo, which deposited its instrument of accession on 25 February 1991.

67. It should also be noted that 14 other States have signed the convention: Angola (28 December 1990), Belarus (13 December 1990), Cameroon (21 December 1990), the Congo (20 June 1990), Germany (20 December 1990), Italy (5 February 1990), Morocco (5 October 1990), Nigeria (4 April 1990), Poland (28 December 1990), Romania (17 December 1990), Ukraine (21 September 1990), Uruguay (20 November 1990), Yugoslavia (12 December 1990), and Zaire (20 March 1990).

68. The Special Rapporteur is obliged to draw attention to the following disturbing contradiction: four years after its adoption, a convention adopted by and developed under the auspices of the General Assembly to prevent and punish mercenary activities cannot enter into force because it does not have a sufficient number of States Parties.

69. Despite the delay in the entry into force of the International Convention, the Special Rapporteur is bound to note that the principles of international law

and the relevant norms of international customary and treaty law are fully applicable as regards the eradication of the reprehensible activities in question, which have so seriously undermined and continue to undermine the enjoyment of human rights and the exercise of the right of peoples to self-determination.

70. The Special Rapporteur must also reiterate that the entry into force of the International Convention will entail a broadening, deepening, greater precision and updating of international regulations to prevent, prosecute and punish recourse to the recruitment, use, financing and training of mercenaries. It will also increase and develop cooperation among States to eradicate such activities and will promote observance of the purposes and principles laid down in the Charter of the United Nations.

VII. CONCLUSIONS

71. In view of the harm done to humanity by the unlawful and criminal activities of mercenaries, and the hard, incriminating evidence that has been amassed, the General Assembly and the Commission on Human Rights have repeatedly condemned the use, recruitment, financing, training, assembly and transit of mercenaries, and have characterized such practices as offences that profoundly disturb all States and are contrary to the purposes and principles laid down in the Charter of the United Nations. While the scope and content of such practices might be subject to theoretical debate, the fact of the matter is that an international legal framework and provisions in the criminal legislation of most countries do exist and that, without prejudice to their further development, they provide States Members with a basis on which to formulate policies on the prevention, prosecution and punishment of mercenary activities.

72. At the same time, the reports and information received and the studies carried out by the Special Rapporteur lead to the conclusion that despite existing legal provisions, and possibly taking advantage of lacunae and ambiguities in those provisions, so many mercenary activities continue to be carried out in various places that it might even be affirmed that there has been a growing trend towards recourse to the use of mercenaries for various unlawful activities that violate human rights and impede the exercise of the right of peoples to self-determination. The growth in such unlawful activities chiefly due to the outbreak of new armed conflicts, which have proliferated in the post-cold-war era, and to the establishment of new States. As is well known, the current international transition has been marred by the resurgence of extremely nationalistic trends and pronounced ethnic and religious intolerance. In this context, political and military tension has arisen in situations which have rapidly degenerated into armed conflicts, characterized by, inter alia, the presence of foreign mercenaries, according to the reports received.

73. While mercenary activities have increased in number, the phenomenon continues to be bound up with certain circumstances that attract individuals willing to become mercenaries, and private groups, clandestine organizations and Governments which, through covert operations, participate in the recruitment of mercenaries. A mercenary is a criminal offender who must be severely punished, in keeping with the characterization of the crime he has committed, but bearing in mind such aggravating factors as his specific skills, experience and

training, which enable him to become involved in a country's affairs with the specific aim of participating in a military activity, thereby impairing political stability, causing economic damage and endangering the safety and the lives of others.

74. Another factor responsible for the increase in the supply of mercenaries is the existence of career military personnel, whose personal situation has deteriorated because of the reduction in or dissolution of the regular armed forces to which they belonged, and who have as a result joined the ranks of the unpaid. Thus there is no shortage of such individuals, who see in any armed conflict an opportunity to become involved in exchange for pay, and they are shown tolerance when they commit cruel acts or engage in looting, which brings them additional economic gain, even as the conflict grows crueller and more inhuman.

75. The act of recruitment is a key element in the characterization of the ensuing act as unlawful. No one crosses a border in order to apply individually and spontaneously to become a mercenary. There are in fact organizations devoted to recruitment, which operate either openly or clandestinely, in violation of the laws of the State where they are carrying out their activities, and in collaboration with government agents of the country or group for which the mercenaries will be working. A criminal relationship is thus established between the recruiter and the recruit. In this regard, controls and express prohibitions provided for by States Members in their domestic legislation are very important in order to prevent such organizations from being set up, to counter any intelligence machinery that through covert operations establishes relationships between government agents and organizations that recruit mercenaries and to prescribe harsh punishment for such unlawful contractual relationships.

76. The Special Rapporteur further notes that there are cases in which legal formulas, or more specifically, standard legal procedures are resorted to in order to conceal a mercenary. He may thus appear to have the legal status of a national of the country where he becomes involved in an armed conflict, or where he will fulfil his criminal assignment, thereby avoiding the epithet of "mercenary". Although this approach legally masks an individual's real mercenary role, the origin of the contractual relationship, the payment he receives, the type of services agreed on, the simultaneous use of other nationalities and passports, etc., must be seen as indications of the true nationality of persons where there are strong grounds to suspect that they are mercenaries. In this respect, problems arise in relation to persons who legally have dual nationality and whose acts are deliberately designed to bring criminal harm to one of the countries of which they are a national, on instructions from the other country of which they are a national, from a third State, or from groups organized to commit attacks.

77. Bands of mercenaries or individual mercenaries may be connected with arms-trafficking or drug-trafficking rings and terrorist groups. An irregular armed group which practices terrorism can acquire the identity of a mercenary group as well, by moving to the territory of another State in order to provide cover and protection in exchange for payment for a drug-trafficking ring, engage in sabotage and unlawful acts, work in a military capacity for a group that is a

party to an internal conflict or occupy a portion of foreign territory, usurping the authority of the sovereign State.

78. Africa is still the continent with the largest mercenary presence. This concept, as construed in international law today, took as its point of departure the presence of professionals of war who were active in and aggravated bloody armed conflicts in various regions of Africa, in order to prevent the exercise of the right to self-determination, independence and the formation of sovereign African States, and in order to form territorial enclaves subordinate to former colonial Powers, or to install Governments subordinate to them or to colonialist ventures. These countries have suffered mercenary aggressions as a result of the policy of apartheid which originated in South Africa and because of colonialist and neo-colonialist interests.

79. Some internal conflicts - such as the conflict in Mozambique - have been subjected to intense activity by mercenaries, who have begun to withdraw from the area. In Mozambique, a peace process has been initiated that includes disarmament, demobilization and the establishment of a new national army. In other countries, peace negotiations have become bogged down and there has been a resumption of civil war. This is because mercenaries have not been expelled from the area, and their activities have not been severely punished. This makes it easier for them to redeploy to neighbouring countries, mainly to South Africa, a country which, at the height of apartheid, was considered a haven for mercenaries. Foreign mercenaries are still in South Africa. Some were allegedly recruited by pro-apartheid organizations, which have formed paramilitary groups to oppose the democratization of South Africa, provoke acts of racist violence and foment deadly clashes between its various ethnic groups. Professional mercenaries have not left Africa by any means; they are awaiting opportunities and taking advantage of any armed conflict that occurs in the region in order to derive unlawful benefit.

80. In Angola, the Lisbon peace agreements of 31 May 1991 have collapsed, despite the progress achieved in their implementation up to the time of the general elections of September 1992, the outcome of which was not recognized by UNITA, causing a fresh outbreak of fighting. As is well known, there was a large number of mercenaries among UNITA armed troops. UNITA's refusal to comply with the strict timetable laid down in the peace agreements, particulary as regards disarmament and reducing the number of troops, helped to maintain ignorance about the unfavourable outcome of the general elections and contributed to the resumption of armed struggle.

81. The Special Rapporteur has suggested in his communications to the Angolan Government, that another attempt should be made to schedule a visit in order to determine on the ground whether mercenaries are present in Angola. A scheduled visit had been cancelled at the suggestion of the Angolan Ministry for Foreign Affairs, as there had been progress in the implementation of the peace agreement.

82. In any case, and without prejudice to the arrangements made with the Angolan Government, for purposes of the Special Rapporteur's visit, there are more than sufficient indications that this is an extremely serious conflict, which is having a consistently adverse effect on the Angolan people, and that the presence of mercenaries on the side of UNITA forces is one of the primary

reasons for the bloody nature of the conflict. According to available reports, mercenary groups are operating in Angolan territory, starting at the border with Zaire; there are also reports of clandestine flights over Angolan territory which carry weapons and mercenaries for UNITA forces, and the mercenaries are alleged to have operated in Mucusso, Jamba, Soyo and Huambo. In addition, former members of the 31st and 32nd Battalions of the South African Defence Forces (SADF) were allegedly recruited by the South African company, Executive Outcomes, as security guards to protect the Angolan oil installations and refineries. All available information confirms that the mercenaries operating in Angola are mainly nationals of Zaire and South Africa.

83. The armed conflict in Liberia continued well into the first six months of 1993, despite the peace initiatives promoted by eight West African heads of State. There is every indication that the conflict is finally nearing an end, following the joint initiative of the United Nations and the Organization of African Unity (OAU), which made it possible to hold peace negotiations in Geneva in July 1993. These negotiations culminated in a global peace agreement to be signed during the summit of the Economic Community of West African States (ECOWAS), in Benin, a cease-fire as from 31 July 1993 and the formation of a transitional Government composed of representatives of the current Interim Government of National Unity, the National Patriotic Front of Liberia (NPFL) and the United Liberation Movement (ULIMO).

84. In previous reports, the Special Rapporteur has analysed and documented the efforts made by President de Klerk to dismantle apartheid and launch a democratization process in South Africa. This process has been made possible by the African National Congress, which, although it has been a victim of the violence of apartheid, its members have been massacred and many of its leaders assassinated, has agreed to participate in the effort to steer South Africa towards democracy. Other political forces have also agreed to participate. Despite this willingness to participate, however, the democratization process is hampered by the violent opposition of extremist pro-apartheid groups, which have even hired mercenaries to form and train paramilitary groups. Thus, while on the one hand virtually the whole political spectrum in South Africa is participating in the National Peace Accord, with its timetable for multiracial elections in April 1994, a plural constituent assembly, a new constitution and a transitional Government until 1999, on the other hand there are extremist groups like the Afrikaner Resistance Movement (AWB), which stir up racial and inter-ethnic violence, carry out acts of vandalism and cause crime by setting up armed gangs containing mercenaries who boast of their mercenary status, their anti-communism and their participation in racist organizations.

85. Against this background the violence continues in South Africa, the work of groups espousing violence who are trying to force the Government into a repressive, backward-looking approach to dismantling apartheid. One clear provocation was the assassination on 10 April 1993 of Chris Hani, a member of the ANC National Executive, at the hands of a Polish mercenary called Janusz Waluk. There are other kinds of activity, too, such as the establishment of international networks of businesses, humanitarian organizations, service agencies and suppliers of arms and mercenaries, which according to the sources consulted have been set up with the dual aim of provoking acts of violence within South Africa and protecting South African economic interests after the end of the apartheid regime. Even though the process of national reconciliation

is moving forward, therefore, it is constantly undermined by an escalation of violence that aims at the failure of any multiracial political agreement.

86. Throughout 1992 and during the first half of 1993 the Special Rapporteur received reports that mercenaries were involved in the armed conflicts taking place in the territory of the former Socialist Federal Republic of Yugoslavia. The information that has been collected, eyewitness accounts and the reports of the world's press bear witness to the dramatic cruelty of the war, the suffering of those subjected to it and, particularly in recent months, the suffering of those living in the territory of Bosnia and Herzegovina, which has become a scene of terrible tortures and other violent acts directed at its people. This has aroused horror throughout the world. The presence of foreigners in this conflict is admitted by all parties, but there exists an open contradiction, in that some of them are mercenaries. In this matter the Special Rapporteur has worked with the Special Rapporteur appointed by the Commission on Human Rights to monitor the human rights situation in the territory of the former Yugoslavia, with the aim of achieving through these joint efforts effective results which may help to bring about a more speedy peace and respect for human rights over the whole region.

87. Although there is some information which gives a glimpse of hope for an end to the armed conflicts in the former Yugoslavia, the crimes that have been committed are so serious that the Special Rapporteur considers that the investigation of them should not be halted. Where mercenaries are known to have participated in such crimes, this should be considered an aggravating factor in the application of sanctions. On this point the Special Rapporteur would like to stress that, although foreigners have participated in the armed conflicts which have taken place and are still taking place in the former Yugoslavia, to determine in which cases mercenaries have actually been specially recruited and engaged to carry out military operations and violent acts against the population requires more details and more investigations on the ground. If the invitations extended by the representatives of the republics which have come into being in the territories of the former Yugoslavia are followed up, on-the-spot investigations will be carried out with the knowledge of and in coordination with the Special Rapporteur appointed by the Commission on Human Rights to investigate the whole situation.

88. Following the breakup of the former USSR the republics which previously formed part of that State have become fully sovereign and independent States, with the majority of them making up the Commonwealth of Independent States (CIS). Disputes of various sorts have arisen in several of those countries, some relating to border issues, others to internal relations between the new State and some of its autonomous regions. But the disputes which have turned into armed conflict are mainly ones which involve some ethnic element and some nationalist, regionalist or purely religious feeling, acting as catalysts in the choice between greater autonomy, territorial redistribution involving a move from one State to another or a change in the nature of the political regime. In every case where the deadlock has turned into armed conflict there has been participation by mercenaries, according to the information analysed by the Special Rapporteur.

89. In the escalation of the armed conflicts which are developing in the territories of the former USSR, there is a mercenary presence in connection with

the following conflicts: (a) the conflict between Armenia and Azerbaijan, over the territory of Nagorny Karabakh, whose inhabitants, the large majority Armenian, have proclaimed the "Republic of Nagorny Karabakh", with Armenian support. The reports which the Special Rapporteur has received concerning the recruitment, financing and use of mercenaries taking part in the conflict have been drawn to the attention of the Governments of Armenia and Azerbaijan; (b) the conflicts that have arisen in Georgia, first in connection with the secessionist aims of the region of South Ossetia and then in Abkhazia, in the north of Georgia, where the claim that foreign mercenaries were taking part was made by President Shevardnadze himself, speaking before the Georgian Parliament in Tbilisi on 10 March 1993; (c) in the Republic of Moldova, where after independence secessionist aims emerged among the Slav and Russian-speaking populations of the left-bank region of the river Dniester, giving rise to serious armed conflict between the armed forces of the Republic of Moldova and the secessionist forces of the so-called Trans-Dniester Republic, in which Cossack mercenaries took part, according to the report made by the President of the Republic of Moldova, Mircea Snegur, on 22 June 1992 to the Moldovan Parliament; (d) in Tajikistan, too, where a violent conflict is in progress, arising from the confrontation between the coalition formed by the Islamic and the Democratic Parties, and the Government, made up of former officials of the Communist regime, as a result of which there is disorder in the country and armed confrontations between rival clans. According to information received by the Special Rapporteur, foreign mercenaries have on several occasions participated in these armed conflicts and the acts that have taken place are so serious that they are destabilizing the Tajik-Afghan border. The Special Rapporteur is still awaiting replies to the letters he has sent to all the States mentioned in this paragraph, and also to the letter he has sent to the Russian Federation, so that he can proceed with his analysis of this sensitive question.

90. With regard to the current status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989, the process of expressing consent to be bound by the International Convention through ratification or accession is advancing extremely slowly. To date, only six States have completed this process: Barbados, Cyprus, Maldives, Seychelles, Suriname and Togo. Fourteen other States have signed the Convention. Four years after its adoption the Convention cannot enter into force because it does not have a sufficient number of States parties. Although there are principles of international law and norms of international customary and treaty law that are applicable with respect to the eradication of mercenary activities, it is important to note the slow pace of this process, which is preventing the Convention from entering into force and thus hampering any improvement in effectively combating the scourge of mercenary activities.

VIII. RECOMMENDATIONS

91. The Special Rapporteur reaffirms his condemnation of the use of mercenaries as a means to violate human rights and to impede the exercise of the right of peoples to self-determination. He also condemns States or groups that are involved in mercenary activities and stresses the need to strengthen the principles of the sovereignty, equality and independence of States, the

self-determination of peoples, respect for the stability of constitutionally established and lawfully functioning Governments and full respect for the human rights of their citizens.

92. Noting that the reports received and the information analysed thus far in 1993 show a rise in mercenary activities in various places, the Special Rapporteur recommends that the General Assembly express its concern over the armed conflicts in which mercenaries have participated and which have adversely affected the emergence and development of new States. Such participation has exacerbated the climate of armed confrontation and hatred, and the General Assembly should also warn of the danger to new States caused by the presence of mercenaries in their territories, irrespective of the relationships that have given rise to their presence.

93. Considering that the rise in mercenary activities is associated with grave situations of internal crisis, in which human rights are threatened and self-determination jeopardized, and given the current delicate stage of consolidation of new States, the crises out of which such States have emerged, and the outbreak of armed conflicts, the Special Rapporteur recommends that the General Assembly advise States to be more alert to the grave dangers inherent in tolerating, permitting or acquiescing in the recruitment, hiring and training of mercenaries in their territories. The elimination of this market of crime is a matter of common interest.

94. In this connection, it is recommended that the General Assembly invite Member States to adopt provisions in their domestic legislation which explicitly prohibit organizations that traffic in mercenaries; prohibit the transit of mercenaries through their territories; and prevent nationals of a country, as well as nationals of other countries resident in its territory, from serving as mercenaries. Domestic legislation should also expressly prohibit intelligence activities which, through covert operations, permit government agents to associate with organizations that recruit mercenaries, and provide severe penalties for such unlawful contractual relationships. On this subject, it is further recommended that Member States examine the modalities of subscribing to extradition agreements, under which they could take prompt action when the extradition of their nationals is sought by another affected State or by several other affected States, on the grounds of their proven participation as mercenaries in unlawful acts.

95. Given the various techniques employed to conceal the status of mercenaries, including recourse to normal legal procedures that grant or purport to grant the nationality of the country in whose armed conflict mercenaries participate, it is recommended that the General Assembly consider the possibility of establishing a group of experts to determine the criteria for defining the real mercenary status of an individual who has dual or multiple nationality or who has benefited from the purported granting of nationality. The sometimes ambiguous rights of those who enjoy dual or multiple nationality and use them for illegal purposes should be circumscribed and criteria established for determining mercenary status by reference to, inter alia, the origin of the contractual relationship, payment, type of services contracted for, and the simultaneous use of other passports.

96. It is recommended that the General Assembly reaffirm its strong condemnation of the presence of mercenaries and of those States or third parties which promote mercenary activities in Africa, reaffirming also its unqualified support for the self-determination and development of the African peoples, and the full enjoyment of their human rights. It should further reaffirm its condemnation of those who use mercenaries to destabilize or overthrow the Governments of African States and to fight the national liberation movements struggling against racism, apartheid, colonial or neocolonial domination and foreign intervention or occupation.

97. It is recommended that the General Assembly suggest that, in addition to the prohibition of mercenary activities and the applicable penalties, measures be agreed upon to expel from African countries all persons of foreign nationality who have served as mercenaries in armed conflicts or in support of apartheid, whether or not such persons have served their sentences. Nationals who have participated in mercenary activities should also be subject to laws in the respective legal system of each country which provide severe penalties for recidivism.

98. Considering that the implementation of the measures provided for in the peace agreements signed in Lisbon on 31 May 1991 has been interrupted in Angola and that UNITA has not only resumed but escalated hostilities by expanding the theatres of armed conflict, thereby increasing the suffering of the civilian population, and that in this context mercenaries have reappeared in Angola, it is recommended that the General Assembly - in addition to the resolutions adopted and the action taken by the United Nations to put an end to the conflict and to bring about a resumption of the implementation of the peace agreements - condemn the presence of mercenaries in Angola; consider their participation as an aggravating factor in the conflict; warn UNITA of the responsibility which it incurs by using mercenaries; and urge all States in the region to prevent their territory from being used for mercenary activities, and to prevent their nationals or foreigners resident in their country from serving as mercenaries, in violation of the right to self-determination and the human rights of the Angolan people.

99. It is recommended that the General Assembly, in addition to reaffirming its strong condemnation of the apartheid regime in South Africa, support all measures based on a national consensus to reach agreements for the full democratization of the country, while condemning the acts of violence that are being encouraged to prevent or delay this process, especially the use of mercenaries by racist groups.

100. With regard to the earlier and current armed conflicts in the territory of the former Yugoslavia, where the presence of foreign mercenaries has been linked to grave human rights violations, the Special Rapporteur recommends that, in addition to earlier resolutions which support the objective of reaching a comprehensive peace agreement, other resolutions be adopted to condemn the recruitment and use of foreign mercenaries by any of the parties to the conflict, and to require a thorough investigation to be undertaken with the aim of punishing those mercenaries who are guilty of crimes. Such investigation should also determine the real nationality of those persons accused of being mercenaries, so as to ensure that they do not evade their responsibility for

these criminal acts through the contrived and temporary use of the nationality of the countries in conflict.

101. Turning to the armed conflicts which have broken out in some of the States members of the former USSR, and without prejudice to the action that is being taken to guarantee self-determination and peace throughout this vast region, the Special Rapporteur recommends the express condemnation of the use of mercenaries by any of the parties to current and earlier armed conflicts, and the prescription of penalties for mercenary activities. He also recommends that all the countries of the region consider adopting measures to ensure that persons who were or still are members of their regular armed forces do not become members of irregular armed groups, whether or not these are regarded as mercenaries.

102. Lastly, with regard to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Special Rapporteur recommends that the General Assembly call upon States that have not yet ratified or acceded to the Convention to take immediate steps to speed up this process, given the common interest of mankind in having an international instrument which would enhance the effectiveness of the struggle against mercenary activities.

Notes

a/ Resolution 44/34, annex.